

1 TRINETTE G. KENT (State Bar No. 025180)
2 10645 North Tatum Blvd., Suite 200-192
3 Phoenix, AZ 85028
4 Telephone: (480) 247-9644
5 Facsimile: (480) 717-4781
6 E-mail: tkent@lemborglaw.com

7 Of Counsel to
8 Lemberg Law, LLC
9 A Connecticut Law Firm
10 1100 Summer Street
11 Stamford, CT 06905
12 Telephone: (203) 653-2250
13 Facsimile: (203) 653-3424

14 Attorneys for Plaintiff,
15 Bart Paschke

16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Bart Paschke,

19 Plaintiff,

20 vs.

21 Midland Credit Management, Inc.,

22 Defendant.
23
24
25
26
27
28

Case No.: 2:15-cv-00356-SRB

FIRST-AMENDED COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, Bart Paschke (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following First-Amended Complaint ~~complaint~~ against Midland Credit
3 Management Inc. (hereafter “Defendant”) and alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”), and repeated
8 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq.
9 (“FDCPA”).
10

11 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), 15 U.S.C. §
12 1692k(d), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
13

14 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
15 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
16 where Defendant transacts business in this district.
17

18 **PARTIES**

19 4. Plaintiff is an adult individual residing in Glendale, Arizona, and is a
20 “person” as defined by 47 U.S.C. § 153(39).
21

22 5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).
23

24 6. Defendant is a business entity located in San Diego, California, and is a
25 “person” as the term is defined by 47 U.S.C. § 153(39).
26

27 7. Defendant uses instrumentalities of interstate commerce or the mails in a
28 business the principle purpose of which is the collection of debts and/or regularly

1 collects or attempts to collect debts owed or asserted to be owed to another, and is a
2 “debt collector” as defined by 15 U.S.C. § 1692a(6).
3

4 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
5

6 8. Plaintiff is a natural person allegedly obligated to pay a debt asserted to
7 be owed to a creditor other than Defendant.

8 9. Plaintiff’s alleged obligation arises from a transaction in which property,
9 services or money was acquired on credit primarily for personal, family or household
10 purposes, is a “debt” as defined by 15 U.S.C. § 1692a(5).
11

12 10. At all times mentioned herein where Defendant communicated with any
13 person via telephone, such communication was done via Defendant’s agent,
14 representative or employee.
15

16 11. At relevant times mentioned herein, Plaintiff utilized a cellular telephone
17 service and was assigned the following telephone number: 602-XXX-8491 (hereafter
18 “Cell Number”).
19

20 12. Beginning in or around February of 2014, Defendant placed calls to
21 Plaintiff’s Cell Number in an attempt to collect a debt.
22

23 13. The aforementioned calls were placed using an automatic telephone
24 dialing system (“ATDS”) and/or by using an artificial or prerecorded voice
25 (“Robocalls”).
26
27
28

1 14. When Plaintiff answered calls from Defendant, he was met with a
2 prolonged period of silence, and he would repeatedly say “hello.” However, the calls
3 were never transferred to a live representative.

4
5 15. Also beginning in or around February of 2014, Defendant placed calls to
6 Plaintiff’s place of employment at telephone number 602-XXX-8830 (hereafter
7 “Work Number”).

8
9 16. On or about March 3, 2014, Plaintiff notified Defendant in writing that he
10 had retained an attorney to assist him with bankruptcy. Plaintiff also provided
11 Defendant with his attorney’s contact information.

12
13 17. Defendant continued to place calls directly to Plaintiff’s Cell Number and
14 Work Number after receiving notice that Plaintiff had retained an attorney.

15
16 18. Furthermore, during a conversation with Defendant, Plaintiff informed
17 Defendant that he could not take Defendant’s calls at work and that he wanted all calls
18 from Defendant to cease.

19
20 19. Despite Plaintiff’s written and oral representations and requests,
21 Defendant continued to call Plaintiff at his Work Number and continued to place
22 ATDS calls to Plaintiff’s Cell Number at an excessive and harassing rate.

23
24 20. Indeed, Defendant placed approximately one hundred (100) ATDS calls
25 to Plaintiff’s Cell Number without Plaintiff’s consent.
26

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, et seq.**

21. Plaintiff incorporates by reference all of the above paragraphs of this
complaint as though fully stated herein.

22. The TCPA prohibits Defendant from using, other than for emergency
purposes, an ATDS and/or Robocalls when calling Plaintiff's Cell Number absent
Plaintiff's prior express consent to do so. See 47 U.S.C. § 227(b)(1).

23. Defendant's telephone system has the earmark of using an ATDS in that
Plaintiff, upon answering calls from Defendant, was met with a prolonged period of
silence. Plaintiff would repeatedly say "hello." However, the calls were never
transferred to a live representative.

24. Defendant called Plaintiff's Cell Number using an ATDS without
Plaintiff's consent in that Defendant either never had Plaintiff's prior express consent
to do so, or such consent was effectively revoked when Plaintiff requested that
Defendant cease all further calls.

25. Defendant continued to willfully call Plaintiff's Cell Number using an
ATDS, knowing that it lacked the requisite consent to do so in violation of the TCPA.

26. Plaintiff was harmed and suffered damages as a result of Defendant's
actions.

1 27. The TCPA creates a private right of action against persons who violate
2 the Act. See 47 U.S.C. § 227(b)(3).
3

4 28. As a result of each call made in violation of the TCPA, Plaintiff is
5 entitled to an award of \$500.00 in statutory damages.
6

7 29. As a result of each call made knowingly and/or willingly in violation of
8 the TCPA, Plaintiff may be entitled to an award of treble damages.
9

10 **COUNT II**

11 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15**
12 **U.S.C. § 1692, et seq.**

13 30. Plaintiff incorporates by reference all of the above paragraphs of this
14 complaint as though fully stated herein.
15

16 31. The FDCPA was passed in order to protect consumers from the use of
17 abusive, deceptive, and unfair debt collection practices and in order to eliminate such
18 practices.
19

20 32. Defendant attempted to collect a debt from Plaintiff and engaged in
21 “communications” as defined by 15 U.S.C. § 1692a(2).
22

23 33. Defendant communicated with Plaintiff at a time or place known to be
24 inconvenient to the Plaintiff, in violation of 15 U.S.C. § 1692c(a)(1).
25

26 34. Defendant communicated with Plaintiff, knowing that Plaintiff was
27 represented by an attorney, in violation of 15 U.S.C. § 1692c(a)(2).
28

35. Defendant communicated with Plaintiff at his place of employment,
knowing that the employer prohibits Plaintiff from receiving such communication, in
violation of 15 U.S.C. § 1692c(a)(3).

36. Defendant engaged in conduct the natural consequence of which was to harass, oppress, or abuse Plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

37. Defendant caused Plaintiff's phone to ring or engaged Plaintiff in telephone conversations repeatedly or continuously, with the intent to annoy, abuse, and harass Plaintiff, in violation of 15 U.S.C. § 1692d(5).

38. The foregoing acts and/or omissions of Defendant constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

39. Plaintiff has been harmed and is entitled to damages as a result of
Defendant's violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

A. Statutory damages of \$500.00 for each call determined to be in violation
of the TCPA pursuant to 47 U.S.C. § 227(b)(3);

B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);

C. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);

1 D. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A);

2 E. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C.
3 § 1692k(a)(3);

4 F. Punitive damages; and

5 G. Such other and further relief as may be just and proper.

6
7
8 **JURISDICTION**

9 ~~40. This action arises out of Defendant's repeated violations of the Fair Debt~~
10 ~~Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").~~

11
12 ~~41. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28~~
13 ~~U.S.C. § 1331.~~

14
15 ~~42. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where~~
16 ~~the acts and transactions giving rise to Plaintiff's action occurred in this district and/or~~
17 ~~where Defendant transacts business in this district.~~

18
19 **PARTIES**

20 ~~43. Plaintiff is an adult individual residing in Glendale, Arizona, and is a~~
21 ~~"person" as defined by 47 U.S.C. § 153(39).~~

22
23 ~~44. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).~~

24 ~~45. Defendant is a business entity located in San Diego, California, and is a~~
25 ~~"person" as the term is defined by 47 U.S.C. § 153(39).~~

26
27 ~~46. Defendant uses instrumentalities of interstate commerce or the mails in a~~
28 ~~business the principle purpose of which is the collection of debts and/or regularly~~

1 ~~collects or attempts to collect debts owed or asserted to be owed to another, and is a~~
2 ~~“debt collector” as defined by 15 U.S.C. § 1692a(6).~~
3

4 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
5

6 47. ~~Plaintiff is a natural person allegedly obligated to pay a debt asserted to~~
7 ~~be owed to a creditor other than Defendant.~~

8 48. ~~Plaintiff’s alleged obligation arises from a transaction in which property,~~
9 ~~services or money was acquired on credit primarily for personal, family or household~~
10 ~~purposes, is a “debt” as defined by 15 U.S.C. § 1692a(5).~~
11

12 49. ~~At all times mentioned herein where Defendant communicated with any~~
13 ~~person via telephone, such communication was done via Defendant’s agent,~~
14 ~~representative or employee.~~
15

16 50. ~~In or around February of 2014, Defendant began calling Plaintiff in an~~
17 ~~attempt to collect a debt.~~
18

19 51. ~~Defendant failed to identify itself in it’s conversations with Plaintiff.~~
20

21 52. ~~Defendant failed to send Plaintiff written notice of the debt within five~~
22 ~~days of initiating communication with Plaintiff.~~
23

24 53. ~~In February of 2014, Plaintiff filed for bankruptcy protection and notified~~
25 ~~the original creditor.~~

26 54. ~~In March of 2014, Plaintiff notified Defendant via US Mail that he had~~
27 ~~retained an attorney and provided Defendant with his attorney’s information.~~
28

1 55.— Defendant continued to place calls directly to Plaintiff after receiving
2 notice that Plaintiff had retained an attorney.

3
4 56.— Defendant also placed calls to Plaintiff's work number in an attempt to
5 collect a debt.

6
7 57.— Plaintiff informed Defendant that he could not take Defendant's calls at
8 work and requested that further calls to his work number cease.

9
10 58.— Despite this request and knowing that Plaintiff's employer did not allow
11 Plaintiff to take Defendant's calls at work, Defendant continued to call Plaintiff's at
12 his place of employment.

13
14 **COUNT I**

15 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15**
16 **U.S.C. § 1692, et seq.**

17 59.— Plaintiff incorporates by reference all of the above paragraphs of this
18 complaint as though fully stated herein.

19
20 60.— The FDCPA was passed in order to protect consumers from the use of
21 abusive, deceptive and unfair debt collection practices and in order to eliminate such
22 practices.

23
24 61.— Defendant attempted to collect a debt from Plaintiff and engaged in
25 "communications" as defined by 15 U.S.C. § 1692a(2).

26
27 62.— Defendant communicated with Plaintiff at a time or place known to be
28 inconvenient to the Plaintiff, in violation of 15 U.S.C. § 1692c(a)(1).

1 ~~63.— Defendant communicated with Plaintiff knowing that Plaintiff was~~
2 ~~represented by an attorney, in violation of 15 U.S.C. § 1692c(a)(2).~~

3
4 ~~64.— Defendant communicated with Plaintiff at his place of employment~~
5 ~~knowing that the employer prohibits Plaintiff from receiving such communication, in~~
6 ~~violation of 15 U.S.C. § 1692c(a)(3).~~

7
8 ~~65.— Defendant engaged in conduct, the natural consequence of which was to~~
9 ~~harass, oppress, or abuse Plaintiff, in connection with the collection of a debt, in~~
10 ~~violation of 15 U.S.C. § 1692d.~~

11
12 ~~66.— Defendant caused Plaintiff's phone to ring or engaged Plaintiff in~~
13 ~~telephone conversations repeatedly or continuously, with the intent to annoy, abuse~~
14 ~~and harass Plaintiff, in violation of 15 U.S.C. § 1692d(5).~~

15
16 ~~67.— Defendant placed telephone calls to Plaintiff without disclosing the~~
17 ~~caller's identity, in violation of 15 U.S.C. § 1692d(6).~~

18
19 ~~68.— Defendant failed to send Plaintiff written notice regarding the alleged~~
20 ~~debt within five (5) days after its initial communication with Plaintiff, in violation of~~
21 ~~15 U.S.C. § 1692g(a).~~

22
23 ~~69.— The foregoing acts and/or omissions of Defendant constitute numerous~~
24 ~~and multiple violations of the FDCPA, including every one of the above cited~~
25 ~~provisions.~~

26
27 ~~70.— Plaintiff has been harmed and is entitled to damages as a result of~~
28 ~~Defendant's violations.~~

PRAYER FOR RELIEF

~~WHEREFORE, Plaintiff prays for judgment against Defendant for:~~

~~H. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);~~

~~I. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);~~

~~J. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C.~~

~~§ 1692k(a)(3) and Cal. Civ. Code § 1788.30(c);~~

~~K. Punitive damages; and~~

~~L. Such other and further relief as may be just and proper.~~

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: ~~February 27~~ May 15, 2015

TRINETTE G. KENT

By: /s/ Trinette G. Kent

Trinette G. Kent, Esq.

Lemberg Law, LLC

Attorney for Plaintiff, Bart Paschke